



CONFEDERATED TRIBES
of the

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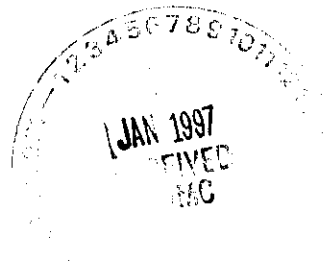
Fed Ex: Old Mission Hwy 30, Pendleton, OR 97801

041062

December 10, 1996

Thomas W. Ferns, NEPA Document Manager
Hanford Remedial Action
Environmental Impact Statement
U.S. Department of Energy
Richland Operations Office
P.O. Box 550, MSIN HO-12
Richland, WA 99352

Paul J. Krupin, Project Manager
Comprehensive Land Use Plan
U.S. Department of Energy
Richland Operations Office
P.O. Box 550, MSIN A5-15
Richland, WA 99352



RECEIVED

DEC 20 1996
DOE-RL/DCC

SUBJECT: CTUIR COMMENTS ON THE AUGUST 1996 DRAFT HANFORD
REMEDIAL ACTION ENVIRONMENTAL IMPACT STATEMENT AND
COMPREHENSIVE LAND USE PLAN

Dear Mr. Ferns and Mr. Krupin:

Enclosed are the comments of staff of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) on the August 1996 Draft Hanford Remedial Action Environmental Impact Statement and Comprehensive Land Use Plan (HRA-EIS/CLUP).

CTUIR staff have three general concerns about the HRA-EIS/CLUP:

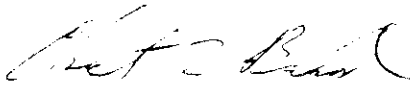
1. The scope of the project is not sufficiently comprehensive to be helpful, as it concerns activities represented by only 10% of the Hanford budget.
2. The HRA-EIS/CLUP fails to fulfill DOE/RL's officially stated purposes for the document.
3. The HRA-EIS/CLUP embodies a surreptitious attack on the rights of other governments at Hanford, principally tribal governments, in violation of federal law and DOE policy.

CTUIR staff urge DOE/RL to abandon the HRA-EIS effort, which in our judgement is incapable of satisfying either the real needs at Hanford, or the stated goals of DOE. Furthermore, as a covert goal of the HRA-EIS appears to be to attack the rights of tribes and other governments and agencies at Hanford, DOE should renounce this effort as illegitimate.

The CTUIR is eager, however, to address the real problems at Hanford, and to do so in a cooperative and consultative manner. CTUIR staff look forward to working with DOE representatives as well as representatives of other tribes, the regulators, the Hanford natural resource trustees, and others in crafting an appropriate and effective response to Hanford's continuing site-wide planning challenges.

We urge DOE to begin discussions with CTUIR staff as soon as possible to begin designing a new approach which will address the real and legitimate needs for sitewide planning, while eschewing any more "Trojan Horse" tactics.

Sincerely,



Christopher L. Burford
Policy Analyst

cc: Kevin Clarke, DOE/RL
Paul Ward/Bill Beckley, Yakama Indian Nation
Donna Powauke, Nez Perce Tribe
Geoff Tallent, Washington Department of Ecology
Jay McConnaughey, Washington Department of Fish and Wildlife
Larry Gadbois, U.S. Environmental Protection Agency
Susan Hughs/Dirk Dunning, Oregon Department of Energy
Hanford Natural Resource Trustee Council

**COMMENTS OF THE
CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

CONCERNING THE AUGUST 1996 DRAFT
HANFORD REMEDIAL ACTION ENVIRONMENTAL IMPACT STATEMENT
AND COMPREHENSIVE LAND USE PLAN

AND ASSOCIATED HANFORD SITE-WIDE PLANNING ISSUES**

December 10, 1996

**I. THE CTUIR HAS A HISTORY OF ADVOCACY FOR AND PARTICIPATION
IN HANFORD SITE-WIDE PLANNING.**

Staff of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) have long urged the U.S. Department of Energy (DOE) Richland Operations Office (DOE/RL) to plan its Hanford activities on a more "holistic" scale. By that, we have meant that individual remediation and waste management decisions at Hanford hold the potential to be made in isolation, without considering the cumulative impacts of these decisions, or the way they may work at cross purposes. At such a complex site, such "disconnects" are probably inevitable. A consistent and concerted effort is necessary to assure integrated planning and to keep such problems to a minimum.

As a result, CTUIR staff have long supported a number of efforts aimed at improving coordinated, cross-program planning at Hanford. For instance, have been active on the Hanford Natural Resource Trustee Council. This body brings together three tribes, two states and two federal agencies in an attempt to: (1) integrate planning for the protection and conservation of Hanford natural resources, (2) promptly and effectively mitigate for impending resource injuries, and (3) compensatorily restore those resources. One goal of the NRTC effort is to save DOE/RL considerable amounts of money by coordinating natural resource protection, mitigation, restoration and consultation activities site-wide and among the various Hanford natural resource trustees, and by avoiding delays and omissions which multiply DOE's liability.

Similarly, CTUIR staff have supported the effort to establish a Biological Resources Management Plan (BRMaP) and a Biological Resources Mitigation Strategy (BRMiS) for Hanford. CTUIR staff have also repeatedly urged DOE/RL to draft and complete an effective Cultural Resource Management Plan. CTUIR staff have participated in the effort to establish an effective groundwater strategy for Hanford.

In addition, CTUIR staff have played a leadership role advocating for and participating in the Columbia River Comprehensive Impact Assessment (CRCIA) project. The significance of

this project is the fact it addresses all impacts to an essential resource, the Columbia River, regardless of the DOE program from which those impacts derive. Thus, the CRCIA is the first truly comprehensive risk modeling project to be adopted at Hanford. In support of this effort, CTUIR staff designed a new draft risk exposure scenario, which models risks to CTUIR tribal members making traditional subsistence use of Hanford natural resources. Such a scenario is desperately needed at Hanford, since the exposure scenarios (agriculture, resident, recreational) currently embodied in the *Hanford Site Risk Assessment Methodology* grossly underestimate risks to tribal subsistence users of natural resources.

II. THE SCOPE OF THE HRA-EIS FAILS TO ADDRESS THE HIGHEST PRIORITY HANFORD SITE-WIDE PLANNING NEEDS.

Because of the interest of CTUIR staff in coordinated site-wide planning, we recognize that there is a strong need to take some further steps in this direction. First, there is a strong need to comprehensively analyze the human health and ecological risks from all current and anticipated activities at the Hanford site. Only an all-inclusive analysis of risk will give decision makers useful information upon which to base future planning decisions. No risk effort to date has accomplished this goal. Instead, all Hanford risk analyses have been piecemeal efforts, only reviewing the risks associated with particular projects. The August 1996 Draft Hanford Remedial Action Environmental Impact Statement and Comprehensive Land Use Plan (Draft HRA-EIS/CLUP) is an example of this failure. While purporting to be a comprehensive planning document, the HRA-EIS/CLUP omits to make any assessment of risk associated with waste management activities (See p. 1-6. See also section 1.5). Likewise, the Tank Waste Remediation System EIS, completed earlier this year, failed to look at post-closure risks, because such an inquiry was beyond the scope of that EIS. Best-effort analysis of *all* risks is an essential component of any planning document (such as the August 1996 Draft HRA-EIS/CLUP) which purports to make site-wide planning decisions. The HRA-EIS/CLUP will fail to meet the needs for which it was purportedly drafted as long as it lacks such an analysis. The Native American Subsistence Exposure Scenario (developed by the CTUIR in cooperation with DOE/RL) is an essential part of such an analysis, having already demonstrated its worth in two recent Hanford efforts, the Columbia River Comprehensive Impact Assessment, and the Tank Waste Remediation System Final Environmental Impact Statement.

Second, there is also a strong need to comprehensively, review, catalog and estimate the resource needs for all major planned or predictable activities on the Hanford Site, whether these are associated with waste management, remediation, other D&D activities, or new projects (such as LIGO, etc.). Such an analysis must take the first steps toward determining where these resources will be acquired, and determine how they will be distributed and used. As part of this second effort, DOE/RL in conjunction with the Hanford Natural Resource Trustee Council must also determine what steps DOE will take to mitigate (i.e.: avoid, minimize, rectify, reduce and compensate, as required by 40 C.F.R. § 1508.20) for injuries to natural and cultural resources which will occur as a result of all Hanford activities.

Finally, once these major projects are completed, DOE/RL will then be in a position to begin drafting a land use plan for Hanford. This plan should be informed by the results of these first two projects, and should be drafted with the full participation of tribes, resource agencies, local governments and other interested parties. Unlike the laughably inept CLUP project, a reformed drafting process would be able to describe at its outset the full nature of the process by which DOE/RL will determine future land use at the site. This includes not just how the land use plan will be drafted, but how it will be implemented and integrated into on-going site activities, and what the opportunities for consultation and public involvement will be. Most importantly (and in marked contrast to the CLUP), this reformed land use planning process would make its decisions openly, on the record, disclosing not just its conclusions but also the reasoning behind each, with opportunities for appeal if such reasoning is absent or flawed.

These three projects: (1) a comprehensive review of *Hanford's* risks to the people and ecology of the region; (2) a comprehensive review of *Hanford's* likely impacts on its current environment (including explicit and binding mitigation/restoration/compensation commitments); and (3) a functioning and defensible land use plan, simply make common sense. Hanford planning will never be truly integrated, efficient, or comprehensible until its activities are reviewed on the site-wide scale. Only once this has been done can DOE/RL (or any of the other governments and agencies concerned with Hanford) represent to their citizens that Hanford decisions are being made in a coordinated and efficient manner. Only once activities and impacts are reviewed on the site-wide scale, can we assure that individual projects at Hanford are not working at cross-purposes. Frankly, it is shocking that we are now in the seventh year of remediation at Hanford without having performed this analysis.

The existence of the HRA-EIS/CLUP project is a tacit acknowledgement by DOE/RL that more comprehensive planning is needed. The HRA-EIS/CLUP, however is fundamentally and fatally flawed. Most obviously, its scope is too narrow, only concerning itself with remediation activities (which only consume about 10% of Hanford's annual budget) while ignoring the rest of Hanford's activities (See section 1.5 of the Draft HRA-EIS). Moreover the Draft HRA-EIS/CLUP utterly fails to achieve either of DOE's officially stated purposes for this document. Most troublingly, the HRA/CLUP manifests a surreptitious attack by DOE/RL on the rights of other governments at Hanford, most egregiously in the case of the rights of American Indian tribal governments such as the CTUIR.

CTUIR staff call upon DOE to acknowledge these failures and take the appropriate next steps. These include abandoning the HRA-EIS/CLUP process and initiating three new processes, as described above. We request government to government consultation with DOE/RL on how to design and implement a replacement planning process.

Because the August 1996 Draft HRA-EIS/CLUP is so flawed, we have not prepared a lengthy or detailed review of its technical provisions. As a result, we have confined our comments, below, to a brief analysis of the more blatant and reprehensible failings of this

document. Once an appropriate process has been designed, CTUIR staff will participate fully in the technical details of its implementation.

III. THE AUGUST 1996 HRA-EIS/CLUP FAILS TO ACHIEVE DOE'S STATED GOALS FOR THIS PROJECT.

Despite spending having spent four years preparing the HRA-EIS, and despite having released the public draft of the document in August 1996, it was not until November 4, 1996, that DOE/RL provided a relatively concise explanation of the purpose of the HRA-EIS. On that date John D. Wagoner, Manager of DOE/RL, stated in a letter to Randall Smith of USEPA and Dan Silver of the Washington Department of Ecology that the purpose of the HRA-EIS is to develop a land use plan for Hanford, and to provide a means of irretrievably and irreversibly committing resources in support of remediation actions. As our discussion, below, reveals, the August 1996 Draft HRA-EIS/CLUP wholly fails to attain these goals.

A. THE CLUP IS A COMPLETE FAILURE AS A LAND USE PLANNING DOCUMENT AND PROCESS.

- 1. Nothing in the August 1996 Draft HRA-EIS/CLUP discloses the reasoning by which DOE/RL arrives at the individual land use designations mapped in the CLUP. As a result, the CLUP's land use designations are arbitrary, capricious and in abuse of DOE/RL's discretion. Meaningful participation in or comment on those decisions is impossible.**

The ultimate goal of any land use planning process is to produce a land use map, which designates preferred uses for specific geographic areas within the planning area. In order to draft such a map, a planning agency must review basic data about the condition of the resources in the planning area, as well as data concerning reasonably likely possible uses of the resources in the planning area. Then the agency must make a host of judgments regarding which uses are preferred, in which areas and why. These decisions form the heart of the land use planning process.

All land use planning debates are disputes over which uses should be preferred in which specific geographic areas. Hence the reasoning of the decision makers is under intense scrutiny. Influencing that reasoning is the goal of all consultation and public participation. As a result, any land use planning decision document must explain the decision makers' reasons for preferring one land use over another in the various geographic areas considered. Such discussion is an essential prerequisite for substantive consultation or public involvement.

Thus, basic principles of administrative law require that the decision makers disclose their reasons for choosing certain uses over others. Such decisions must be rational and based upon the record, or they will be overturned for being "arbitrary, capricious, [or] an abuse of

discretion" (5 U.S.C. § 706(2)(A)). Any land use planning document that fails to disclose the basis for the land use decisions contained within it is a complete failure.

The August 1996 Draft HRA-EIS/CLUP is such a document.

The CLUP presents conclusions, in the form of its land use map, without ever disclosing how it arrived at those conclusions. As a result, those decisions are arbitrary and capricious, effectively bar meaningful consultation, and expose the HRA-EIS/CLUP effort to be a sham.

The CLUP does contain two future land use maps, one proposing land use designations for 1997 (Figure 8-2), and one projecting land uses in 2046 (Figure 8-3). The construction of these maps is the primary goal of the entire HRA-EIS/CLUP effort. Yet, nowhere in all of its hundreds of pages of text does the August 1996 Draft HRA-EIS/CLUP disclose the reasoning behind the specific land use designations it proposes for specific areas of the Hanford Site. It is impossible for a person to determine, on the basis of the material presented in the August 1996 Draft HRA-EIS/CLUP, why DOE/RL chose particular land uses for particular geographic areas.¹

A person reviewing these maps should be able to quickly determine the answer to a question such as: "Why is the south 600 area designated as a potential economic development zone?" Yet a reviewer will search the August 1996 Draft HRA-EIS/CLUP in vain for the answer to this question. It is not there.

¹The CLUP provides a great deal of raw or minimally processed data (section 6, section 7.1). The presentation of this data, however, contains no information from which the reader may draw conclusions about the relative quality of the individual data points. In addition, the CLUP provides broad, vague assumptions about potential future use (section 5), but no discussion of how DOE/RL weighed, balanced, or otherwise used these assumptions in arriving at its land use designations.

Appendix A of the CLUP simply presents a summary of the data points already provided elsewhere in the CLUP, rearranged into a table form. In addition, the Appendix A tables are incomplete, failing to include constraints that are openly discussed elsewhere in the CLUP and the August 1996 HRA-EIS. Table 8-2 merely further summarizes this same data, compressing it to the point that the table itself is incomprehensible. All of these tables only arrange data -- they provide no insights into how DOE/RL arrived at particular land use designations for particular geographic areas. Tables 7-9 and 8-3 present certain conclusions, but reveal nothing about how DOE/RL got from those conclusions to the individual geographic decisions reflected on the CLUP land use plan maps.

Likewise, the August 1996 HRA-EIS itself contains detailed discussion about potential future uses of the various geographic areas of the site, framed in terms of the various likely levels of remediation that may take place in those areas. While this discussion may set some theoretical outer bounds on potential land use designations, it does nothing to explain how DOE/RL arrived at the very specific land use designations contained in its two future land use maps.

CTUIR staff were only able to find one sentence in the entire HRA-EIS/CLUP that described the decision making process whereby DOE/RL staff determined the land uses that appear on the Figure 8-2 (1997) and Figure 8-3 (2046) maps. That sentence states:

Professional judgement was exercised by the DOE's land-use team in deciding the magnitude of the constraint by considering the relationship among the particular constraint issue, its legal drivers, and the capability of the DOE to address or deal with the particular factor or issue.²

It is nice to know that DOE is exercising "professional judgement," but DOE will have to expose that judgement to independent review by the affected governments, agencies and the public if it is going to enact a land use plan at Hanford.

2. The CLUP process was executed backwards, preventing meaningful comment and participation.

The failure of the CLUP to successfully propose land use designations for Hanford was probably preordained, considering the complete failure of DOE/RL to follow a well-defined, publicly accountable, land use planning process.

On February 12, 1996, CTUIR staff wrote to Lloyd Piper, then-DOE/RL Assistant Manager for Facility Transition, expressing our concerns with the ill-defined nature of the CLUP effort. The full letter is attached to these comments. We believe it is instructive to review those concerns, given the manifest failures of the August 1996 Draft HRA-EIS/CLUP. The central portion of our letter stated:

Despite the fact that CLUP meetings have been occurring weekly since October of 1995, the following basic features of the CLUP have never been defined in print:

- 1. How DOE will use the CLUP once the CLUP is developed and adopted.*
- 2. The standards DOE must comply with while drafting the CLUP.*
- 3. How DOE intends to use GIS "data layers" that are principally based upon speculation and conjecture.*
- 4. What DOE will do to improve the accuracy of the "data layers" before relying upon them to make land use decisions.*
- 5. How DOE will use the information provided by participants in the CLUP process.*
- 6. The degree to which DOE has to consider the information provided by CLUP participants.*

²CLUP Section 7.1, page 7-1.

7. *The rights of CLUP process participants to require DOE to alter CLUP data assumptions or conclusions.*
8. *The rights of CLUP process participants in regards to each other.*
9. *The relationship of the CLUP to the HRA-EIS effort.*
10. *Whether (and why or why not) the CLUP will require a separate NEPA process.*
11. *The relationship of the CLUP to established cleanup standards.*

In short, we are embarked upon an activity wherein the process is not defined, the endpoint is not defined, and the relationship of the effort to other pertinent activities is not defined.

The concerns we raised last February have been borne out in the August 1996 Draft HRA-EIS/CLUP. DOE/RL has managed to draft a proposed land use plan without ever defining the process in which it would be used, not to mention the process under which it would be adopted. Only the last page of the CLUP's substantive text (page 9-2) addresses this matter in any detail. That page identifies four process stages that would implement the CLUP. None of these currently exist.

First, "[a]n Implementation Plan will be created and adopted to define the land-use management process in which the Comprehensive Plan is implemented, managed, and maintained." This information should have been determined before the CLUP process even began, and the details of it should have been available to participants in the CLUP process from the outset. From a process standpoint, it is incredible that DOE/RL would simply refer to this plan as something that will be done only once the CLUP is adopted. The rest of the page identifies "Land-Use Planning and Management Plans" and a "Hanford Site Land Use Management Program" document, which will also be written once the CLUP is completed.

These implementation components define the context of the CLUP within the larger Hanford land use planning process. Understanding how these components work is essential to understanding the CLUP and to effectively commenting on the CLUP or participating in its drafting. Yet none of these components will be available until after the CLUP is completed. Apparently DOE/RL itself does not fully understand how these documents and processes will interrelate.

These matters should all be defined before the CLUP process begins. Otherwise, people reviewing the CLUP are addressing a "moving target," which is never defined until the decisions are finalized -- at which point it is too late to influence those decisions.

DOE/RL's failure to define the context and process of the CLUP in advance improperly handicaps consulting governments, agencies and the public, while indefensibly maximizing DOE's discretion. The vacuous nature of the August 1996 CLUP is probably a direct result of this process, which has emphasized appearances over substance. Whether the CLUP is

empty because its process is a failure, or whether the process is a sham in order to protect DOE's ability to write a vacuous CLUP, CTUIR staff are forced to reach the same conclusion. The CLUP process, and its product, are a failure.

b. THE HRA-EIS IS INCAPABLE OF EFFECTIVELY COMMITTING NATURAL RESOURCES UNDER GOVERNING LAW.

John Wagoner's November 4, 1996 letter states that in addition to defining a land use plan for Hanford, the goal of the August 1996 Draft HRA-EIS is:

To analyze the impacts of completed, ongoing and potential remedial action alternatives across the Hanford Site and the associated potential commitment of natural resources, as would be needed to support the environmental restoration program and comprehensive land use plan.

While the quoted infinitive phrase is hardly a model of clarity, it is a good deal more specific than anything DOE/RL had produced before. Mr. Wagoner provided further clarification of this goal in the next portion of his letter, where he listed the "decisions DOE intends to make in the HRA EIS Record of Decision." Mr. Wagoner states that the second and last of these intended HRA-EIS ROD decisions is:

To select among alternatives for the commitment of resources needed to implement cleanup decisions for the major Hanford Site areas considered in the Final HRA EIS.

In this final quote, Mr. Wagoner gets to the heart of the August 1996 Draft HRA-EIS's second goal. This goal is to provide a procedural justification for declaring resources at the Hanford Site to be "irretrievably and irreversibly committed" in the language of NEPA (see 40 C.F.R. § 1502.18) and CERCLA (42 U.S.C. § 9607(f)(1)). As we discuss, below, the August 1996 Draft HRA-EIS/CLUP fails to achieve this goal, because an EIS such as the HRA-EIS is incapable of examining the potential commitments with adequate specificity, and because the HRA-EIS admits that it has not examined these commitments with any specificity. Moreover, it is not clear that DOE/RL's remediation actions could qualify for this exemption under any circumstances.

- 1. A document as broadly scoped as the Draft HRA-EIS is incapable of determining the resources which would qualify for the "irretrievable and irreversible commitment" exemption from natural resource damage liability.**

Section 5.11 of the August 1996 HRA-EIS states in the final sentence of its first paragraph: "Identification of irreversible and irretrievable commitments of resources is required by NEPA, and is the subject of exclusions of liability under Section 107(f) of CERCLA."

DOE/RL is apparently attempting to exempt itself from natural resource damage liability for natural resource injury that will result from its remediation projects. This exemption, however, only applies if, "the damages complained of were specifically identified as an irreversible and irretrievable commitment of natural resources in an environmental impact statement, or other comparable environmental analysis" (CERCLA § 107(f)(1)).

The nature of the HRA-EIS is such that it is impossible for the HRA-EIS to "specifically identify" such damages. Such a broadly scoped document could never reach the necessary level of specificity required to qualify for this exemption. The HRA-EIS is such a broadly scoped document that it can, at best, only speculate about the ultimate resource impacts of the CERCLA remediation decisions whose broad impacts the HRA is attempting to estimate.

The text of the August 1996 Draft HRA-EIS fully supports this conclusion. Thus, it states at section 5.1.4 (p. 5-5):

This EIS used conservative assumptions for calculating waste volumes generated by remediation, acreage of disturbance, and remediation costs, in order to provide bounding analyses of impacts. *The use of conservative assumptions in the analysis of impacts leads to an associated level of uncertainty.* (Emphasis added.)

Likewise, at page 5-6, the EIS continues:

This EIS provides bounding (*i.e., worst case*) estimates for waste volumes, areas of disturbance, and costs. These parameters continue to evolve through the CERCLA process from conservative engineering studies, through more refined baseline planning estimates, *to site-specific estimates based on solid characterization data.* Estimates will continue to be refined through the CERCLA process, but are not anticipated to exceed the bounding estimates presented in this EIS. (Emphasis added.)

Thus, by the HRA-EIS's own admission, it is not capable of making specific identification of irreversible and irretrievable commitments of resources, because it is incapable of being specific. It should also be noted that assumptions which are "conservative" by estimating the maximum possible resource need, are also the assumptions which are the most "liberal" in the degree to which they could exempt DOE from liability. Obviously they cannot meet CERCLA's requirement of specificity.

2. The August 1996 Draft HRA-EIS fails to describe natural resource impacts with adequate specificity to qualify for the exemption from CERCLA natural resource damage liability.

Even if a document such as the HRA-EIS were capable of "specifically identifying" natural resources which would be irreversibly and irretrievably committed, the August 1996 Draft HRA-EIS fails to address these impacts with any specificity. For instance, the draft EIS's discussion of cumulative impacts to particular resources (Section 5.9.4, Summary of Cumulative Impacts, p. 5-210) states that:

In a number of cases, insufficient information is available on the potential impacts of the additional action or the scheduling of the proposed remedial action to allow a quantitative assessment of potential impacts. . . . The likelihood and intensity of some cumulative impacts (e.g., socioeconomic effects) depends on the scheduling of the many activities taking place or proposed to occur at the Hanford Site.

In addition, the discussion of impacts to various natural and cultural resources under this section is extremely vague and general. Moreover, the EIS's discussion of unavoidable adverse impacts (Section 5.10), is so general that it amounts to less than an entire page. Finally, the irreversible and irretrievable commitments of resources section, 5.11, dismisses whole categories of resources with very little analysis. Cultural resource commitments receive only four lines of discussion. The capping requirements, and the associated commitments of geologic resources and habitat are based upon the most grossly inflated numbers DOE could estimate. These "outer bounds" and "worst case" estimates by no means constitute specific identification of the resources being committed. As a result, the HRA-EIS fails to allow DOE to qualify for the "irreversible and irretrievable commitment" exemption from CERCLA natural resource damage liability.

Finally if it were possible to write the HRA-EIS in such a manner that it adequately specified these impacts (and CTUIR staff do not believe this is possible), DOE would face a number of additional legal hurdles that would bar DOE from qualifying for this exemption from natural resource damage liability. CTUIR staff feel that DOE should not be expending public resources on an ill-considered effort to avoid responsibility for DOE's actions.

IV. THE AUGUST 1996 DRAFT HRA-EIS EMBODIES A SYSTEMATIC ATTACK ON TRIBAL RIGHTS AND AUTHORITY.

In the foregoing discussion, CTUIR staff have demonstrated that the August 1996 Draft HRA-EIS fails to address the most important and pressing planning needs on the site. We have also demonstrated that the August 1996 Draft HRA-EIS also fails to attain even the more humble goals that DOE/RL had officially assigned it.

In the view of CTUIR staff, however, the most chilling feature of the HRA-EIS is the way it embodies a surreptitious attack on the rights of members of the CTUIR, in blatant violation of DOE's legal, policy, and ethical duties to the CTUIR.

A. The August 1996 Draft HRA-EIS surreptitiously attacks tribal treaty rights.

Sections 4.11.4 and 5.13.2.2.2 of the Draft HRA-EIS contain characterizations of the rights of the CTUIR under the CTUIR's treaty with the United States which are pure conjecture. DOE, nevertheless, passes these statements off as fact. These particular characterizations conveniently have the result of vastly expanding DOE's discretion at the direct expense of the CTUIR and other tribes.

This summer, CTUIR staff confronted DOE over similar characterizations which appeared in the Tank Waste Remediation System Draft EIS. CTUIR staff pointed out at that time that such characterizations should not be within that EIS. In response, DOE agreed not to include those characterizations in the Tank Waste Remediation System Final EIS.

CTUIR staff are offended that DOE has chosen to insert similar characterizations into the Draft HRA-EIS. We request that such characterizations be deleted.

The reappearance of such language in this document reflects a surreptitious attempt to attack the rights of tribes. Such behavior reflects an unreconstructed attitude that is at variance with DOE's public and private image. It constitutes bad faith, damaging the cooperative relationship that the CTUIR and DOE have struggled to build over the past decade, and is a violation of DOE's American Indian Policy. The appearance of this language in the HRA indicates that the TWRS experience was not an isolated event, but reflects a more entrenched problem. CTUIR staff call on DOE/RL to repudiate these practices. If, in the future, DOE feels the need to broach such issues, they should discuss them in direct consultation with the CTUIR (in compliance with DOE's American Indian Policy) instead of surreptitiously slipping them into public documents.

B. The risk analyses in the HRA-EIS fail to protect the health of members of the CTUIR when means is readily available to achieve this goal.

In two planning efforts sponsored by DOE/RL this year -- the CRCIA and the Tank Waste Remediation System Final EIS -- the DOE implemented a draft risk exposure scenario that models risks to American Indians making subsistence use of natural resources at the Hanford Site. This Native American Subsistence Exposure Scenario was developed by CTUIR staff and reflects their knowledge of the traditional subsistence activities of CTUIR members. In the CRCIA and the TWRS efforts, this scenario revealed that many activities that were protective of the health of the general public under the *Hanford Site Risk Assessment Methodology* (HSRAM), failed to protect the health of CTUIR members. This revelation has

important consequences for Hanford decision making. It directly addresses DOE's ability and willingness to protect the health and resources of CTUIR members. It goes to the heart of the matters which are supposed to be addressed within the August 1996 Draft HRA-EIS.

Despite DOE's knowledge of the existence of this scenario, and the fact the DOE has used this scenario in two high priority risk assessment efforts this year, the August 1996 Draft HRA-EIS does not even acknowledge this scenario exists (although it does seem to make an oblique attempt to rationalize not using this scenario. See sentence three in the final paragraph on page 3-5 of the draft HRA-EIS.).

DOE should be seeking out the CTUIR to discuss the further development and implementation of the Native American Subsistence Exposure Scenario. Yet, DOE/RL's HRA staff have never contacted CTUIR staff about the potential use of this scenario. DOE/RL's failure to include the CTUIR's native American subsistence scenario in this EIS -- indeed, DOE/RL's failure to even consult with the CTUIR about this matter -- constitute violations of DOE's trust duties to the CTUIR as well as DOE's American Indian Policy.

DOE/RL's failure to model risks to the most sensitive users of the site, in a document that purports to set "outer bounds" on future land use, is a failure that strikes to the core of the August 1996 HRA-EIS. Human health risk modeling is the analytical basis of most of the key decisions in the August 1996 Draft HRA-EIS, yet DOE has failed to even make inquiries concerning the most high-risk potential uses of the site, despite actual knowledge of and experience with, and ready access to an exposure scenario that would have addressed these matters. For this reason alone, the August 1996 Draft HRA-EIS is a fundamentally flawed document, which fails to satisfy the most basic NEPA requirements. If such an oversight were repeated in the final version of an EIS like the HRA, the EIS would never survive judicial review.

C. The August 1996 Draft HRA-EIS considers quarrying places which are sacred to members of the CTUIR, such as Gable Mountain and Gable Butte, despite a ten year record of CTUIR correspondence opposing consideration of such an action.

Consultation is only meaningful if it occasionally results in alteration of the consulting agency's behavior. Otherwise, it is just a hollow show. In the preceding two comments, CTUIR staff have illustrated ways in which DOE/RL has evidenced a disturbing contempt for consultation in the text of the August 1996 Draft HRA-EIS. DOE apparently seeks to use the HRA-EIS as a way to avoid good faith performance of its trust duties to the CTUIR. DOE has attempted to avoid or marginalize matters which CTUIR staff had believed were settled or would be dealt with in an appropriate manner.

Yet another example of this disturbing failure is the August 1996 Draft HRA-EIS's consideration of using holy places of CTUIR members as source quarries for waste site caps. On occasions too numerous to recount, dating back to the CTUIR's first activities at Hanford

(which were associated with the Basalt Waste Isolation Project), the CTUIR has repeatedly stated that it will not accept the quarrying of such places as Gable Mountain and Gable Butte. Nevertheless, DOE has continued to study the possibility of destroying these treasures. An irony is that those same studies now demonstrate that there are many viable alternatives, even from an engineering and economics standpoint, to the desecration of places such as Gable Mountain or Gable Butte. Even if those studies had concluded otherwise, however, the CTUIR would refuse to allow the further desecration of these places.

This matter would be funny if it were not so perverse. The U.S. government came to these lands, evicted American Indians who were living there in villages that may predate western civilization, made the most destructive weapons ever known to man, polluted the landscape with wastes that will exist for millennia, and now, in expression of its change of heart, proposes to mitigate that pollution by destroying the remaining holy places.

DOE/RL should have heard enough by now. The alternative of desecrating Gable Mountain, Gable Butte, or similar places for the purposes of capping DOE/RL's wastes is not viable. DOE/RL need consider it no further. The CTUIR calls upon DOE/RL to formally withdraw these sites from any further consideration for such destructive "uses."

V. NEXT STEPS

The HRA-EIS/CLUP effort is a failure. DOE must abandon this effort in favor of a trio of more appropriately scoped site-wide planning efforts -- a sitewide Hanford human health and environmental risk analysis; a sitewide Hanford resource demands, utilization, mitigation and compensation process (developed in coordination with the Hanford Natural Resource Trustee Council); and a land use plan.

In determining the structure and scope of these efforts, DOE/RL must consult with the CTUIR frequently and in good faith. Hallmarks of these reformed processes should include: (1) use of the Native American exposure scenario developed by the CTUIR, (2) acknowledgement of the CTUIR's off-reservation treaty rights, (3) protection of CTUIR member's sacred sites, (4) concrete, up-front, equitably scaled mitigation and restoration commitments.

We look forward to meeting with DOE/RL in the weeks and months ahead to help develop and implement these more appropriate and pragmatic initiatives.



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February 12, 1996

Lloyd Piper
Assistant Manager for Facility Transition
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Richland Operations Office
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SUBJECT: CLARIFICATION OF CTUIR STAFF CONCERNS REGARDING THE
HANFORD "COMPREHENSIVE LAND-USE PLANNING" PROCESS.

Dear Mr. Piper:

Technical staff of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) have been participating in the weekly Hanford "Comprehensive Land-Use Planning" (CLUP) meetings since they began in October 1995. Despite profound misgivings about the CLUP process, we have participated in these meetings out of a desire to monitor the progress of the CLUP and to contribute to this effort, where appropriate. Nevertheless, it has come to the attention of CTUIR staff that our presence at these meetings has been construed on occasion by DOE representatives as an endorsement of the CLUP process. Nothing could be further from the truth.

In our August 1995 meeting with Paul Krupin and Thomas Ferns, during CLUP meetings and on several other occasions CTUIR staff have expressed to DOE representatives the conditional nature of CTUIR participation in the CLUP process. We are concerned that these statements have not been heeded or have been misconstrued. Therefore, we feel the need to express to you in print our concerns about the CLUP process and the fact that our participation in the CLUP in no way constitutes Special Sciences and Resources Program or CTUIR endorsement of the CLUP process, its eventual product, or even its (still undefined) goals.

Despite the fact that CLUP meetings have been occurring weekly since October of 1995, the following basic features of the CLUP have never been defined in print:

1. How DOE will use the CLUP once the CLUP is developed and adopted.
2. The standards DOE must comply with while drafting the CLUP.
3. How DOE intends to use GIS "data layers" that are principally based upon speculation and conjecture.

4. What DOE will do to improve the accuracy of the "data layers" before relying upon them to make land use decisions.
5. How DOE will use the information provided by participants in the CLUP process.
6. The degree to which DOE has to consider the information provided by CLUP participants.
7. The rights of CLUP process participants to require DOE to alter CLUP data assumptions or conclusions.
8. The rights of CLUP process participants in regards to each other.
9. The relationship of the CLUP to the HRA-EIS effort.
10. Whether (and why or why not) the CLUP will require a separate NEPA process.
11. The relationship of the CLUP to established cleanup standards.

In short, we are embarked upon an activity wherein the process is not defined, the endpoint is not defined, and the relationship of the effort to other pertinent activities is not defined. The CLUP meetings are not even recorded. Without a record, how can DOE be required to acknowledge it has even received comments made at the CLUP, much less be required to respond to them? The entire process may well be a sham.

CTUIR staff have been aware of these shortcomings of the CLUP process from the outset. Indeed, we raised these very same concerns when we met with Paul Krupin and Thomas Ferns in August of 1995. Nevertheless, to date we have participated in CLUP activities -- out of a interest that the CLUP might evolve into something more substantial and useful. We wanted to be there to participate and assist if that evolution took place. At the same time, it is perfectly reasonable for CTUIR staff to wonder if the entire CLUP effort is a grand waste of time. It is also perfectly reasonable for us to be concerned about how DOE will use the fact of our participation in such an undefined process.

CTUIR staff are concerned that our participation in the CLUP may be being used to lend credibility to the CLUP effort. We wish to clarify that such a conclusion would be inappropriate. Indeed, given the undefined nature of the CLUP process, we are not even sure that continuing to participate in the CLUP is in the CTUIR's best interests. Indeed, being associated with such an ambiguous activity is as likely to harm the CTUIR's credibility as it is to bolster the CLUP's.

I would be interested in discussing the direction, function and nature of the CLUP process with you in greater detail, at your convenience.

Sincerely,

J. R. Wilkinson

J. R. Wilkinson
Program Manager

cc: Paul Krupin, A5-15
Thomas Ferns, H0-12
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